

1 SEYFARTH SHAW LLP
2 Joseph J. Orzano (SBN 262040)
3 E-mail: jorzano@seyfarth.com
Seaport East, Suite 1200
3 Two Seaport Lane
Boston, MA 02210
4 Telephone: (617) 946-4800
Facsimile: (617) 946-4801

5 Matthew Catalano (*pro hac vice*)
6 Email: mcatalano@seyfarth.com
620 Eighth Avenue
7 New York, NY 10018
Telephone: (212) 218-5500
8 Facsimile: (212) 218-5526

9 Attorneys for Defendant
KING'S HAWAIIAN BAKERY WEST, INC.
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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION
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16 DIEISHA HODGES and ROXANNE
17 COLAMARINO, individually, and on behalf
of all others similarly situated,

18 Plaintiffs,

19 v.

20 KING'S HAWAIIAN BAKERY WEST, INC.,

21 Defendant.

22 Case No. 4:21-cv-04541-PJH

23 **DEFENDANT KING'S HAWAIIAN
BAKERY WEST, INC.'S OBJECTION
TO PLAINTIFFS' NOTICE OF
VOLUNTARY DISMISSAL**

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1 Defendant King's Hawaiian Bakery West, Inc. ("King's Hawaiian") objects to Plaintiffs
 2 Dieisha Hodges and Roxanne Colamarino ("Plaintiffs") Notice of Voluntary Dismissal, ECF No.
 3 33 ("Plaintiffs' Notice").

4 Plaintiffs' Notice purports to "voluntarily dismiss" this action. But this cannot be: the
 5 action is already dismissed. The Court's November 8, 2021 order granting King's Hawaiian's
 6 motion to dismiss is clear: "The court GRANTS defendants' motion to dismiss plaintiff's
 7 complaint with leave to amend. Plaintiffs shall have 28 days from the date of this order to file an
 8 amended complaint curing the deficiencies noted in this order." ECF No. 31 ("Order") at 15. Today
 9 is the last day for Plaintiffs to amend the Complaint, and they have evidently declined to do so,
 10 instead purporting to file a voluntary dismissal "[p]ursuant to Federal Rule of Civil Procedure
 11 41(a)(1)(A)(i)." Plaintiffs' Notice at 1. It is too late for such a notice. Dismissal by the Court has
 12 already occurred, and there is nothing for Plaintiffs to "voluntarily" dismiss. Plaintiffs should not
 13 be permitted to undermine this Court's order, presumably to attempt to file their claims again at
 14 some unspecified future time, or even in some other jurisdiction.

15 King's Hawaiian respectfully requests that the Court reject Plaintiffs' Notice and instead
 16 dismiss this action with prejudice. In the alternative, should the Court be inclined to permit
 17 Plaintiffs to voluntarily dismiss the action, King's Hawaiian respectfully requests the opportunity
 18 to fully brief the issue.

19 DATED: December 6, 2021

SEYFARTH SHAW LLP

20 By: /s/ Joseph J. Orzano
 21 Joseph J. Orzano

22 Attorneys for Defendant
 23 King's Hawaiian Bakery West, Inc.

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